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AFFIS ARIFFIN

v.

PP

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COURT OF APPEAL, PUTRAJAYA
ZALEHA ZAHARI JCA
CLEMENT SKINNER JCA
BALIA YUSOF JCA
[CRIMINAL APPEAL NO: C-05-119-2009]

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20 JULY 2011

CRIMINAL LAW: *Dangerous Drugs Act 1952 - Section 39B(1)(a) - Trafficking in dangerous drugs - Appeal against conviction and sentence - Failure of prosecution to produce forensic report to connect the appellant with drugs found - Absence of fingerprint or nail clippings - Whether affected prosecution's case - Whether there was cogent evidence to prove appellant had physical possession and knowledge of drugs - Whether there was sufficient evidence to trigger presumption of s. 37(da)(vi) Dangerous Drugs Act 1952 - Failure to investigate defence story - Whether there was a break in chain of evidence - Whether there was a misdirection in law*

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The appellant was charged with the offence of trafficking in dangerous drugs under s. 39B(1)(a) of the Dangerous Drugs Act 1952 ('the DDA'), to wit, 1135.70 grams of cannabis. Briefly, the facts were that on 13 July 2004, a police party consisting of PW3 and PW5 conducting Operasi Tapis, had noticed the appellant carrying a sling bag standing in the vicinity of a Petronas Petrol Station and approached the appellant. As soon as SP3 identified himself as a policeman, the appellant tried to run away but was caught after a struggle. When the sling bag which the appellant was carrying was examined, two packages wrapped in newspapers each containing dried leaves were found inside. The contents of the two packages were confirmed to be cannabis. The learned judge found that the appellant was in possession of the said drugs *ie*, had physical custody and control of the two packages in the sling bag and knew the nature of the contents of the packages. The prosecution relied on the presumption mentioned in s. 37(da)(vi) DDA to prove that the appellant was trafficking in the drug. The appellant's defence was that the two policemen had approached and handcuffed him, covered his head with a jacket and placed him in the backseat of a Proton Wira car. The

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appellant said he was then driven to Balok beach where the Wira car was thoroughly searched and a sling bag was produced. The appellant denied that he was carrying the sling bag when he was apprehended at the petrol station. The learned judge found that the defence did not raise a reasonable doubt on the prosecution's case. Hence, the appellant was found guilty of the charge and was convicted and sentenced to death. The appellant thus appealed and raised these grounds (i) the learned judge had failed to take into consideration that no forensic report was produced by the prosecution to connect the appellant with the cannabis found *ie*, the absence of appellant's fingerprint or nail clippings; (ii) that the prosecution had failed to investigate and record statements from the workers at the Petronas Gas Station, and had failed to investigate his story about the two ladies he had allegedly travelled with in the Wira car thus creating a break in the chain of evidence; (iii) that the trial judge had misdirected herself in law as to the 'roles' played by each prosecution witness.

Held (dismissing the appeal; affirming decision of High Court)

Per Clement Skinner JCA delivering the judgment of the court:

(1) The absence of the appellant's fingerprint or nail clippings to associate him with the drugs in question was of no consequence to the prosecution's case as there was other cogent evidence before the court to prove that he was in physical possession of the offending drugs when arrested (*Gunalan Ramachandran & Ors v. PP*). There was sufficient evidence to trigger the presumption in s. 37(da)(vi) DDA as there was sufficient cogent evidence to prove that the appellant was in 'possession' of the cannabis. There was also sufficient evidence to infer that the appellant knew that the sling bag he was carrying contained prohibited drugs as the appellant had taken flight and put up a struggle. The prosecution herein had relied on the direct evidence of the credible witnesses, PW3 and PW5, and there was nothing to show that their eye witness account on the point was inherently improbable or unreliable. (paras 7.1.2 & 7.2.2)

(2) The learned judge had correctly recognised that the appellant's story regarding two ladies, Noha and Lina, as well as the Wira car was not worthy of belief, particularly when it was reverted in evidence that the Registration No. CAN 103 was registered to a Yamaha Motorcycle. Further, the prosecution witnesses testified that they had seen the appellant standing in the vicinity of the petrol station carrying a sling bag when he was arrested and there was no Wira car near him. The failure of the police to investigate into the matters complained of did not create a break in the chain of evidence in the prosecution's case as alleged as the two ladies and the Wira car were not essential facts relied on by the prosecution to prove its case. (paras 7.2.4 & 7.2.5)

(3) The appellant had submitted that the learned judge had said that PW2 was the arresting officer whereas in actual fact the arresting officer was PW3, thus the learned judge had misdirected herself. However, from reading that particular passage in the judgment, it was very clear that there was an obvious typographical mistake made when referring to the witnesses in question because later on in the same paragraph the learned judge correctly described the roles of PW2 and PW3. Further, when the learned judge had considered the evidence of PW2 the chemist regarding his analysis of the drugs, there was no mix up between the chemist PW2 and the arresting officer PW3. Accordingly, there could not have been a misdirection in law about the roles of each prosecution witness as alleged by the appellant. (para 7.3.1)

Bahasa Malaysia *Translation Of Headnotes*

Perayu dituduh melakukan kesalahan mengedar dadah berbahaya di bawah s. 39B(1)(a) Akta Dadah Berbahaya 1952 ('ADB'), iaitu, 1135.70 gram cannabis. Secara ringkas, fakta-fakta menunjukkan bahawa pada 13 Julai 2004, pihak polis yang terdiri dari PW3 dan PW5 yang menjalankan Operasi Tapis, telah melihat perayu membawa satu beg sandang sambil berdiri di sekitar kawasan Stesen Minyak Petronas dan telah mendekati perayu. Sebaik sahaja SP3 memperkenalkan dirinya sebagai pegawai polis, perayu terus cuba melarikan diri tetapi ditangkap selepas berlakunya pergelutan. Apabila beg sandang yang dibawa perayu diperiksa, dua bungkusan dibaluti surat khabar yang mengandungi daun-daun kering dijumpai di dalamnya. Kandungan kedua-dua bungkusan tersebut disahkan sebagai cannabis. Hakim bicara mendapati bahawa perayu

mempunyai milikan ke atas dadah-dadah tersebut, iaitu mempunyai jagaan dan kawalan fizikal ke atas kedua-dua bungkusan di dalam beg sandang dan mengetahui sifat kandungan-kandungan di dalam bungkusan-bungkusan tersebut. Pihak pendakwaan bergantung kepada anggapan yang disebut di dalam s. 37(da)(vi) ADB untuk membuktikan bahawa perayu mengedar dadah tersebut. Pembelaan perayu adalah dua pegawai polis telah mendekatinya dan menggarinya, menutup kepalanya dengan sehelai jaket dan meletakkannya di dalam tempat duduk belakang sebuah kereta Proton Wira. Perayu berhujah bahawa beliau telah dibawa ke pantai Balok di mana kereta Wira tersebut telah diperiksa betul-betul dan sebuah beg sandang dikemukakan. Perayu menafikan bahawa beliau telah membawa beg sandang tersebut apabila beliau ditahan di stesen minyak. Hakim bicara mendapati bahawa pihak pembela tidak menimbulkan keraguan munasabah ke atas kes pendakwaan. Oleh itu, perayu didapati bersalah dan telah disabit dan dihukum mati. Perayu merayu dan membangkitkan alasan-alasan ini (i) hakim bicara gagal mengambil dalam pertimbangan bahawa tiada laporan forensik dikemukakan oleh pihak pendakwaan untuk menghubungkannya dengan cannabis yang ditemui iaitu ketiadaan cap jari atau potongan-potongan kuku perayu; (ii) pihak pendakwaan telah gagal membuat penyiasatan atau merekodkan keterangan daripada pekerja-pekerja di Stesen Minyak Petronas, dan telah gagal menyiasat apa yang telah diceritakan oleh perayu mengenai kewujudan dua wanita yang didakwa telah menaiki kereta Wira dengan perayu oleh itu mewujudkan pencelahan dalam rangkaian keterangan; (iii) bahawa hakim bicara telah tersalah arah dari segi undang-undang mengenai 'peranan-peranan' yang dimainkan oleh setiap saksi pihak pendakwaan.

Diputuskan (menolak rayuan; mengesahkan keputusan Mahkamah Tinggi)

Oleh Clement Skinner HMR menyampaikan penghakiman mahkamah:

(1) Ketiadaan cap jari atau potongan kuku-kuku perayu untuk mengaitkan perayu dengan dadah-dadah yang dipersoalkan tidak penting untuk kes pendakwaan kerana terdapatnya keterangan kukuh lain di hadapan mahkamah untuk membuktikan bahawa perayu mempunyai milikan fizikal ke atas dadah-dadah berbahaya itu semasa beliau ditahan (*Gunalan Ramachandran & Ors v. PP*). Terdapat keterangan yang memadai untuk membangkitkan anggapan di dalam s. 37(da)(vi)

A ADB kerana terdapat keterangan kukuh yang cukup untuk membuktikan bahawa perayu mempunyai 'milikan' ke atas cannabis itu. Juga terdapat keterangan yang memadai untuk membuat kesimpulan bahawa perayu tahu beg sandang yang dibawanya itu mengandungi dadah-dadah yang dilarang kerana
B perayu telah cuba melarikan diri dan telah bergelut dengan pegawai polis. Pihak pendakwaan di sini bergantung kepada keterangan terus saksi-saksi yang boleh dipercayai, PW3 dan PW5, dan tidak terdapat apa-apa yang menunjukkan bahawa apa yang disaksikan oleh mereka mengenai perkara itu tidak
C mungkin atau tidak boleh diharapkan.

(2) Yang arif hakim telah dengan betul mendapati bahawa apa yang diceritakan oleh perayu mengenai dua wanita, Noha dan Lina, dan juga kereta Wira, tidak boleh dipercayai, lebih-lebih
D lagi apabila keterangan menunjukkan bahawa nombor berdaftar CAN 103 telah didaftarkan kepada sebuah motosikal Yamaha. Seterusnya, saksi-saksi pihak pendakwaan telah memberi keterangan bahawa mereka telah melihat perayu berdiri di persekitaran stesen minyak itu sambil membawa beg sandang
E apabila beliau ditahan dan tidak terdapat kereta Wira berdekatan dengannya. Kegagalan polis untuk menyiasat aduan perayu mengenai hal-hal tersebut tidak mewujudkan pencelahan dalam rangkaian keterangan kes pendakwaan seperti yang didakwa kerana dua wanita dan kereta Wira tersebut bukanlah
F fakta-fakta penting yang pendakwaan bergantung pada untuk membuktikan kesnya.

(3) Perayu telah berhujah bahawa yang arif hakim telah menyatakan PW2 sebagai pegawai menangkap manakala
G hakikat sebenarnya pegawai menangkap adalah PW3, oleh itu yang arif hakim telah tersalah arah. Bagaimanapun, daripada membaca bahagian tertentu dalam penghakiman, ia adalah jelas bahawa terdapatnya satu kesilapan tipografi apabila merujuk kepada saksi-saksi yang diperkatakan sebab kemudiannya di
H dalam perenggan yang sama yang arif hakim telah dengan betul menggambarkan peranan-peranan PW2 dan PW3. Seterusnya, apabila yang arif hakim telah mempertimbangkan keterangan ahli kimia PW2 mengenai analisis dadah-dadah tersebut, hakim bicara tidak mencampuradukkan ahli kimia PW2 dan pegawai
I menangkap PW3. Oleh sebab itu, salah arah dalam undang-undang mengenai peranan-peranan setiap saksi pendakwaan seperti yang didakwa oleh perayu tidak wujud.

Case(s) referred to:
Gunalan Ramachandran & Ors v. PP [2004] 4 CLJ 551 CA ***(refd)***
PP v. Abdul Rahman Akif [2007] 4 CLJ 337 FC ***(refd)***
PP v. Razali Johari [2009] 2 CLJ 133 CA ***(refd)***
Warner v. Metropoliton Police Commissioner [1968] 2 All ER 356 ***(refd)***
Y Jeyamuraly Yesiah v. PP [2007] 5 CLJ 605 CA ***(dist)***

Legislation referred to:
Dangerous Drugs Act 1952, ss. 37(da)(vi), 39(B)(1)(a)

For the appellant - Hue Kok Chung; M/s Viknes Ratna & Co
For the respondent - Samihah Rhazali DPP

[Appeal from High Court, Kuantan; Criminal Appeal No: 45-2-2005]

Reported by Suhainah Wahiduddin

JUDGMENT

Clement Skinner JCA:

[1] This is the hearing of an appeal brought by Affis bin Ariffin ('the appellant') who was charged with an offence of trafficking in dangerous drugs under s. 39(B)(1)(a) of the Dangerous Drugs Act 1952 ('the DDA'), to wit, 1135.70 grams of cannabis at Kuantan. On 27 April 2009 the High Court Kuantan found the appellant guilty of the charge, convicted him and sentenced him to punishment of death.

The Background Facts

[2] The brief facts leading up to the charge are these. On 13 July 2004 a police party consisting of ASP Azhar bin Ahmad (PW3), Insp Rusdi and Sgt Mej Mohd Rafit bin Admer (PW5) were in a car driven by Insp Rusdi conducting Operasi Tapis when they passed a Petronas Petrol Station at Balok Makmur, Kuantan. They noticed a Malay male, later identified as the appellant, carrying a sling bag standing in the vicinity of the petrol station. After stopping their car a little further up from where the appellant was standing, SP3 and SP5 approached the appellant. SP3 identified himself to the appellant as a policeman whereupon the appellant tried to run away but was caught after a struggle. SP3 conducted a search of the appellant's body but nothing incriminating was found. When the sling bag (exh. P9) which the appellant was carrying was examined, two packages wrapped in

A newspapers each containing dried leaves, suspected to be cannabis were found inside. The appellant, the sling bag and the suspected drugs were then brought to the police station for further investigations. The testimony of PW3 regarding the apprehension of the appellant and the finding of the two packages in the sling
B bag the appellant was carrying is supported by the evidence of SP5 who gave similar evidence. In their cross-examination both PW3 and PW5 denied that they were aware of the presence of two ladies named 'Noha' and 'Lina' at the petrol station or that a Proton Wira car Reg No CAM 103 was present at the petrol
C station. They also denied that after his apprehension the appellant was driven to Balok beach in the Wira car.

[3] The two packages seized from the appellant's bag were sent to the Chemistry Department for analysis. The Chemist, Mohamad
D Bin Shafie (PW2), confirmed in evidence that after analysis, the contents of the two packages was cannabis weighing 934.5 grams and 206.2 grams respectively giving a total weight of 1135.7 grams of cannabis, a dangerous drug listed in the First Schedule DDA as defined in s. 2 of the DDA.

E **[4]** On the basis of the evidence outlined above the learned judge found that the appellant was in possession of the said drugs ie, had physical custody and control of the two packages in the sling bag and knew the nature of the contents of the packages ie,
F prohibited drugs. As the total weight of the drugs was well above the statutory limit of 200 grams mentioned in s. 37(da)(vi) DDA, the prosecution relied on the presumption mentioned in that section to prove that the appellant was trafficking in the drug. The learned judge accordingly found that a *prima facie* had been
G established against the appellant and called him to enter on his defence.

[5] The appellant gave evidence on oath. His defence was that he was at the petrol station at the material time because earlier on, two ladies named Noha and Lina had invited him to go out
H for dinner with them. They had gone to his house to pick him up in a Proton Wira car bearing Reg. No CAN 103 ('the Wira'). Noha was driving, Lina was seated in the front passenger seat while he was seated behind. According to the appellant, while on their way to dinner Noha went to the station to fill petrol. On
I arrival there, Noha allegedly got out of the car to make payment while Lina also went to the washroom. The appellant said he too

got out of the car and stood close ("berhampiran") to the Wira. The appellant said that two persons then came up to him and immediately hand-cuffed him and then told him they were policemen. According to the appellant PW3 then covered his (the appellant's) head with a jacket and put him into the back seat of the Wira. The appellant said he was then driven to Balok beach where the Wira car was thoroughly searched and a sling bag was produced. The appellant said he was asked to admit but his reply was that he did not know anything. The appellant said he was then given a beating after which he was taken back to the police station. In his evidence in chief the appellant said that he was not sure from where in the Wira car the sling bag was found. It was also his evidence that he had informed PW3 and the investigating officer Insp Jamaludin (PW6) about Noha and Lina as well as the Wira car. He also said he mentioned the two ladies and the Wira car to Insp. Kassim who recorded his cautioned statement. The appellant denied that he was carrying the sling bag when he was apprehended at the petrol station.

[6] The learned judge did not accept the defence story and found that the defence did not raise a reasonable doubt on the prosecution's case. The learned judge did not believe the appellant's story about Noha and Lina. She found it an illusory invention of the appellant. Even though the appellant claimed to have told SP3 about the two ladies, which SP3 firmly denied, the learned judge said the appellant's assertion about the ladies was vague as the appellant never said when between 1pm (when he was arrested) and 3-4pm (when he was handed over to the investigating officer PW6) that he informed PW3 about the two ladies. The learned judge also relied on the fact that when PW6 had informed PW3 about the appellant mentioning Noha and Lina in his cautioned statement, PW3 had said the two ladies were not at the petrol station. With regard to the Wira Car Reg CAN 103, the learned judge pointed out that since it is the appellant's case that he was driven away from the petrol station in the Wira car itself, if Noha and Lina were really present at the petrol station when the car was driven off, it is strange that there is no evidence that any police report was made about the car going missing. Further, the learned judge also referred to the evidence of PW7, Encik Nik Sanusi Nik Abd Rahman of the Jabatan Pengangkutan Jalan, Kuantan, Pahang who confirmed that the Registration No. CAN 103 was issued to a Yamaha Motorcycle

A on 25 September 1995, the registered owner of which is one Shamsul Nazri bin Mohamad. PW7 also testified that in the year 2004, the number CAN 103 was still registered to the same motorcycle.

B **This Appeal**

[7] The appellant raised the following grounds in this appeal. We will deal with each in turn.

7.1 The failure of the prosecution to send to the Chemist for C fingerprinting evidence and fingernail evidence to establish whether the appellant had passive possession of the cannabis in the bag.

7.1.1 The appellant contends that the learned judge failed to D take into consideration that throughout the trial no forensic report was produced by the prosecution to connect the appellant with the cannabis found, whether in the form of the presence of the appellant's fingerprints or the presence of cannabis resin or residue E on his fingernails.

7.1.2 We find no merit in this contention. In our judgment it does not follow as a matter of course that the absence of the appellant's fingerprints or because no cannabis residue was found on his fingernails it means that the F appellant was not connected to the drugs in question. Each case must be decided on its own facts. Whether or not the appellant is connected to the drugs in question is a fact in issue in this case. A fact in issue in any case may be proved by more means than one. G Here the prosecution relies on the direct evidence of PW3 and PW5 to prove that the appellant was in physical possession of the drugs in question when he was apprehended, in that, the cannabis was found in two packages inside the sling bag which the appellant H was carrying. The learned judge obviously accepted SP3 and SP5's evidence on the matter. We find the learned judge was correct in accepting their evidence. They were credible witnesses. There is nothing in the appeal record to show or suggest that they gave I inconsistent or contradictory evidence. Neither was there anything to show that their eye witness account on the point is inherently improbable or unreliable.

Accordingly the absence of the appellant's fingerprint or nail clippings to associate him with the drugs in question was of no consequence to the prosecution's case as there was other cogent evidence before the court to prove that he was in physical possession of the offending drugs when arrested (see *Gunalan Ramachandran & Ors v. PP* [2004] 4 CLJ 551, CA).

7.2 The failure of the prosecution to investigate and record statements from the workers at the Petronas Gas Station thus creating a break in the chain of evidence.

7.2.1 It was the contention of the appellant that to constitute the offence of trafficking in drugs, there must be proof of some overt act on the part of the accused. Mere passive possession is insufficient (see *PP v. Razali Johari* [2009] 2 CLJ 133). The appellant submitted that in this case, if at all, he was only found in passive possession of the drugs in question because there is no evidence that he had done any overt act to traffic in the drugs nor was there any evidence of negotiations between the appellant and a third party. It is the appellant's contention that since he had disclosed to PW3 and PW6 the presence of Noha and Lina at the petrol station, the police had failed to investigate whether his assertion about the two ladies was a mere afterthought. According to the appellant the police should have investigated with the workers at the petrol station, including with the Cashier and the CCTV recording there to find out if Noha had paid for petrol and whether the Wira car was there on the date in question. Accordingly, it was the appellant's contention that since the police had not carried out investigations into the matters mentioned, there was a break in the chain of evidence. We do not agree.

7.2.2 With regard to the submission that the appellant had not done any overt act towards trafficking in the drugs, we find no merit in this submission as this was a case in which the prosecution relied on the presumption stated in s. 37(da)(vi) of the DDA to prove trafficking. Once the conditions stated in the section are met, the presumption of trafficking is triggered without the

prosecution having to prove any of the overt acts mentioned in s. 2 DDA. In this case there was sufficient evidence to trigger the presumption in s. 37(da)(vi) DDA as there was sufficient cogent evidence to prove that the appellant was in "possession" of cannabis within the meaning of that word as understood in the context of criminal law. Evidence was led through SP3 and SP5 that when apprehended, the appellant was physically carrying the sling bag in which the two packages containing the cannabis were found. There was also sufficient evidence to infer that the appellant knew that the sling bag he was carrying contained prohibited drugs as the appellant had taken flight and put up a struggle when PW3 identified himself as a policeman. As pointed out by the learned judge, when that fact is considered together with other circumstances such as, the fact that when PW3 held the bag he could feel from the outside that something was inside it, and given the fact that the two packages weighed more than one kilogram, the proper inference to be drawn is that the appellant knew that the bag which he was in physical custody and control of contained the packages and he also knew the nature of the contents of the packages ie, prohibited drugs, which on analysis weighed more than 200 grams of cannabis. In our judgment, the learned judge drew the correct inference from the facts just mentioned. In *PP v. Abdul Rahman Akif* [2007] 4 CLJ 337 the Federal Court approved what was said in *Warner v. Metropoliton Police Commissioner* [1968] 2 All ER 356 about the correct inference to be drawn about the state of knowledge of the contents of a package which a person deliberately assumes control of. The relevant passage from the judgment of Lord Morris reads:

> If, however, someone deliberately assumes control of some package or container then I would think that he is in possession of it. If he deliberately so assumes control knowing that it has contents, he would also be in possession of the contents, I cannot think it could be rational to hold that someone who is in possession of a box which he knows to have things in it is in possession of the box but not in possession of the things in it.

7.2.3 With regard to the appellant's contention that the police failed to investigate his story about Noha and Lina and the Wira car, we find no merit in this submission. In our judgment, when evaluating all the evidence at the end of the case and in deciding whether to believe the defence story or what weight was to give to it or whether that story created a reasonable doubt in the prosecution's case, the learned judge was entitled to consider the probability or improbability of the story itself and how consistent with itself that story is. Here the learned judge correctly recognized that the appellant's story about Noha, Lina and the Wira car was not worthy of belief for the reasons she gave, particularly when it was reverted in evidence that the Registration No. CAN 103 actually belongs to a Yamaha motorcycle and not a car.

7.2.4 Quite apart from that, we note that the version of events given by the appellant is diametrically opposite to that given by PW3 and PW5. Whereas the appellant says he was standing next to the Wira car carrying nothing when he was arrested, the prosecution witnesses say he was standing in the vicinity of the petrol station carrying a sling bag when he was arrested - there was no Wira car near him. Further, the prosecution's version is that when the bag the appellant was carrying was examined at the station, the two packages containing the suspected drugs were found inside. However, from the appellant's evidence-in-chief, his version is that immediately after his arrest he was bundled into the Wira car by the police officers and driven from the petrol station to Balok beach where after a search of the Wira car the sling bag was produced. However it needs to be mentioned here that during the prosecution's case, when the defence was cross-examining the prosecution witnesses, the defence case as put to PW3 was that the sling bag was in fact recovered from beneath the driver's seat of the Wira car at the petrol station and not at Balok beach. This is particularly evident from the following questions put to PW3 in his cross-examination by learned defence counsel (at p. 38 Part A, Record of Appeal):

A Q: Kedua-dua perempuan ini telah pun pergi ke bilik air dan kamu menahan OKT dan telah mengarahkan beliau mengambil beg tersebut dari kereta CAN 103 dan beg tersebut berada di bawah tempat pemandu?

A: Tidak setuju.

B Q: OKT dibawa ke Pantai Coral Beach Resort dalam CAN 103, betul?

A: Tidak setuju.

C 7.2.5 This line of questioning shows how inconsistent with itself the story of the appellant is on a crucial part of his own case. The learned judge was correct to disbelieve the appellant's story about Noha and Lina and the Wira car even though the police did not D investigate into their existence. In our judgment the failure of the police to investigate into the matters complained of did not create a break in the chain of evidence in the prosecution's case as alleged as the two ladies and the Wira car are not essential facts E relied on by the prosecution to prove its case. It is not the prosecution's case that the drugs were recovered from the Wira car. So whether the police investigated into the two ladies who were supposed to have been in the Wira car or about the Wira car itself does not F hurt the prosecution's case nor did it create a reasonable doubt in the prosecution's case and neither did it create a gap in the prosecution's case.

7.3 The learned trial judge had misdirected herself in law as to G the "roles" played by each prosecution witness.

7.3.1 The appellant complained that at para 3.4, p. 9 of her judgment, the learned judge had said that PW2 was the arresting officer whereas in actual fact the arresting officer was PW3 while PW2 was the Chemist. H Accordingly the appellant submitted that the learned judge had misdirected herself when she failed to appreciate the roles played by the various prosecution witnesses. We do not agree. It is very clear to us from reading that particular passage in the judgment that I there was an obvious typographical mistake made when referring to the witnesses in question because later on

in the same paragraph the learned judge correctly describes the roles of PW2 and PW3. Further, nowhere else in the judgment does the learned judge make the same "error". We should point out that when the learned judge considered the evidence of PW2 the Chemist regarding his analysis of the drugs, there was no mix-up between the Chemist PW2 and the arresting Officer PW3. Accordingly there could not have been a misdirection in law about the roles of each prosecution witness as alleged by the appellant.

7.3.2 The appellant further complained that the learned judge had used the words "barang salah" rather than the word "dadah" in p. 10 of her judgment when she discussed what was the proper inference to be drawn from the fact that the appellant had put up a struggle when apprehended. According to the appellant the words "barang salah" could also refer to contraband goods. So when the learned judge used those words it could mean that the learned judge believed that the appellant was in possession of contraband goods and not necessarily illicit drugs and so it could not be inferred that the appellant knew that the packages contained cannabis. In support, the dissenting judgment in *Y Jeyamuraly Yesiah v. PP* [2007] 5 CLJ 605 at p. 608 was referred to.

7.3.2 We find no merit in this contention. In the first place the facts in *Yesiah*'s case are distinguishable from the facts here. The issue in that case was whether it could be inferred from the appellant's conduct there of handing over a biscuit tin containing illicit drugs in response to a question by the police officer to the appellant to hand over "apa-apa barang salah", that the appellant there knew that the contents of the tin was illicit drugs, which according to the dissenting judgment need not necessarily be so since "barang salah" could also refer to contraband or pirated or stolen goods and not just illicit drugs. However, in this case when the learned judge used the words "barang salah", she was not discussing whether the appellant here had handed over anything to PW3 in response to

A a question put to the appellant by PW3 as was the case in *Yesiah*'s case. The learned judge here was not dealing with such a situation. Here, apart from using the words "barang salah" once only, a reading of her judgment at p. 10 shows that the judge used those
B words after referring to the word "drugs" in the same passage. Accordingly, we find that the learned judge had not misdirected herself on the proper inference to be drawn from the conduct of the appellant in putting up a struggle on the day in question.

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[8] It was for all the above reasons that we dismissed the appeal of the appellant and affirmed the decision of the High Court in convicting and imposing the sentence earlier mentioned on the appellant.

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